

ASSEMBLY BILL

No. 2424

Introduced by Assembly Member Niello

February 19, 2010

An act to amend Sections 201 and 202 of, and to repeal Section 201.7 of, the Labor Code, relating to employment.

LEGISLATIVE COUNSEL'S DIGEST

AB 2424, as introduced, Niello. Employment: payment of wages.

Existing law provides that all unpaid wages earned by a discharged employee are due immediately upon discharge.

This bill would instead require that, subject to specified exceptions, an employer pay all unpaid wages due to a discharged employee within a reasonable time not exceeding 24 hours after discharge, excluding weekends and holidays. The bill would provide that payment may be made by mail to the most current address of the employee in the employer's payroll records or to an alternate address provided by the employee at the time of discharge, or by making payment available to the discharged employee at a location specified by the employer. The bill would also make conforming changes to existing provisions.

Vote: majority. Appropriation: no. Fiscal committee: yes. State-mandated local program: no.

The people of the State of California do enact as follows:

1 SECTION 1. Section 201 of the Labor Code is amended to
2 read:

1 201. (a) If an employer discharges an employee, the wages
2 earned and unpaid at the time of discharge are due and payable
3 immediately. ~~An employer who lays off as follows:~~

4 (1) *Payment of wages upon discharge shall be made within a*
5 *reasonable time not exceeding 24 hours after discharge, excluding*
6 *weekends and holidays. The payment may be made by mail to the*
7 *most current address of the employee in the employer's payroll*
8 *records or to an alternate address designated by the employee in*
9 *writing at the time of his or her discharge, or by making the*
10 *payment available to the employee at a location specified by the*
11 *employer. The date that the payment is mailed or made available*
12 *constitutes the date of payment.*

13 (2) *Notwithstanding paragraph (1), payment of wages to a group*
14 *of employees laid off by reason of the termination of seasonal*
15 *employment in the curing, canning, or drying of any variety of*
16 *perishable fruit, fish, or vegetables, shall be deemed to have made*
17 *immediate payment when the wages of said employees are paid*
18 *within a reasonable time as necessary for computation and payment*
19 *thereof; provided, however, that the reasonable time shall not*
20 *exceed exceeding 72 hours, and further provided that payment*
21 *shall be made by mail to any an employee who so requests and*
22 *designates a mailing address therefor.*

23 (b) Notwithstanding any other provision of law, the state
24 employer shall be deemed to have made ~~an immediate~~ payment
25 of wages ~~under in compliance with~~ this section for any unused or
26 accumulated vacation, annual leave, holiday leave, or time off to
27 which the employee is entitled by reason of previous overtime
28 work where compensating time off was given by the appointing
29 power, provided *that*, at least five workdays prior to his or her
30 final day of employment, the employee submits a written election
31 to his or her appointing power authorizing the state employer to
32 tender payment for any or all leave to be contributed on a pretax
33 basis to the employee's account in a state-sponsored supplemental
34 retirement plan as described under ~~Sections~~ *Section* 401(k), 403(b),
35 or 457 of the Internal Revenue Code provided the plan allows
36 those contributions. The contribution shall be tendered for payment
37 to the employee's 401(k), 403(b), or 457 plan account no later than
38 45 days after the employee's discharge from employment. Nothing
39 in this section is intended to authorize contributions in excess of

1 the annual deferral limits imposed under federal and state law or
2 the provisions of the supplemental retirement plan itself.

3 (c) (1) Notwithstanding any other provision of law, when the
4 state employer discharges an employee, the employee may, at least
5 five workdays prior to his or her final day of employment, submit
6 a written election to his or her appointing power authorizing the
7 state employer to defer into the next calendar year payment of any
8 or all of the employee's unused or accumulated vacation, annual
9 leave, holiday leave, or time off to which the employee is entitled
10 by reason of previous overtime work where compensating time
11 off was given by the appointing power. To qualify for the deferral
12 of payment under this section, only that portion of leave that
13 extends past the November pay period for state employees shall
14 be deferred into the next calendar year. An employee electing to
15 defer payment into the next calendar year under this section may
16 do any of the following:

17 (1)

18 (A) Contribute the entire payment to his or her 401(k), 403(b),
19 or 457 plan account.

20 (2)

21 (B) Contribute any portion of the deferred payment to his or her
22 401(k), 403(b), or 457 plan account and receive cash payment for
23 the remaining noncontributed unused leave.

24 (3)

25 (C) Receive a lump-sum payment for all of the deferred unused
26 leave as described above.

27 (2) Payments shall be tendered under this section no later than
28 February 1 in the year following the employee's last day of
29 employment. Nothing in this section is intended to authorize
30 contributions in excess of the annual deferral limits imposed under
31 federal and state law or the provisions of the supplemental
32 retirement plan itself.

33 SEC. 2. Section 201.7 of the Labor Code is repealed.

34 ~~201.7. An employer who lays off an employee or a group of~~
35 ~~employees engaged in the business of oil drilling shall be deemed~~
36 ~~to have made immediate payment within the meaning of Section~~
37 ~~201 if the wages of such employees are paid within such reasonable~~
38 ~~time as may be necessary for computation or payment thereof;~~
39 ~~provided, however, that such reasonable time shall not exceed 24~~
40 ~~hours after discharge excluding Saturdays, Sundays, and holidays;~~

1 and provided further, such payment may be mailed and the date
2 of mailing is the date of payment.

3 The Legislature finds and determines that special provision must
4 be made for the payment of wages on discharge of employees
5 engaged in oil drilling because their employment at various
6 locations is often far removed from the employer's principal
7 administrative offices, which makes the computation and payment
8 of wages on an immediate basis unduly burdensome.

9 SEC. 3. Section 202 of the Labor Code is amended to read:

10 202. (a) If an employee not having a written contract for a
11 definite period quits his or her employment, his or her wages shall
12 become due and payable not later than 72 hours thereafter, unless
13 the employee has given ~~72-hours~~ *hours*' previous notice of his or
14 her intention to quit, in which case the employee is entitled to his
15 or her wages at the time of quitting. Notwithstanding any other
16 provision of law, an employee who quits without providing a
17 72-hour notice shall be entitled to receive payment by mail if he
18 or she so requests and designates a mailing address. The date of
19 the mailing shall constitute the date of payment for purposes of
20 the requirement to provide payment within 72 hours of the notice
21 of quitting.

22 (b) Notwithstanding any other provision of law, the state
23 employer shall be deemed to have made ~~an immediate~~ payment
24 of wages ~~under in compliance with~~ this section for any unused or
25 accumulated vacation, annual leave, holiday leave, sick leave to
26 which the employee is otherwise entitled due to a disability
27 retirement, or time off to which the employee is entitled by reason
28 of previous overtime work where compensating time off was given
29 by the appointing power, provided *that*, at least five workdays
30 prior to his or her final day of employment, the employee submits
31 a written election to his or her appointing power authorizing the
32 state employer to tender payment for any or all leave to be
33 contributed on a pretax basis to the employee's account in a
34 state-sponsored supplemental retirement plan as described under
35 ~~Sections~~ *Section* 401(k), 403(b), or 457 of the Internal Revenue
36 Code provided the plan allows those contributions. The
37 contribution shall be tendered for payment to the employee's
38 401(k), 403(b), or 457 plan account no later than 45 days after the
39 employee's last day of employment. Nothing in this section is
40 intended to authorize contributions in excess of the annual deferral

limits imposed under federal and state law or the provisions of the supplemental retirement plan itself.

(c) (1) Notwithstanding any other provision of law, when a state employee quits, retires, or disability retires from his or her employment with the state, the employee may, at least five workdays prior to his or her final day of employment, submit a written election to his or her appointing power authorizing the state employer to defer into the next calendar year payment of any or all of the employee's unused or accumulated vacation, annual leave, holiday leave, sick leave to which the employee is otherwise entitled due to a disability, retirement, or time off to which the employee is entitled by reason of previous overtime work where compensating time off was given by the appointing power. To qualify for the deferral of payment under this section, only that portion of leave that extends past the November pay period for state employees shall be deferred into the next calendar year under this section may do any of the following:

~~(1)~~

(A) Contribute the entire payment to his or her 401(k), 403(b), or 457 plan account.

~~(2)~~

(B) Contribute any portion of the deferred payment to his or her 401(k), 403(b), or 457 plan account and receive cash payment for the remaining noncontributed unused leave.

~~(3)~~

(C) Receive a lump-sum payment for all of the deferred unused leave as described above.

(2) Payments shall be tendered under this section no later than February 1 in the year following the employee's last day of employment. Nothing in this section is intended to authorize contributions in excess of the annual deferral limits imposed under federal and state law or the provisions of the supplemental retirement plan itself.